IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 752 OF 2005

Ajit son of Kashinath Ganpat Sali and ors. .. Appellants

Vs.

Anita wife of late Shri Andu Sali .. Respondent

Mr. A.M. Saraogi for the appellants.
Mr. P.S. Dani with Mr. Yadav i/by Mrs. Agnes Martines for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : August 02, 2005.

P.C.:

1. Heard Mr. Saraogi the learned counsel for the appellants and Mr. P.S. Dani with Mr. Yadav i/by Mrs. Agnes Martines the learned counsel for the respondent.

2. The appellants have filed S.C. Suit Stamp No.3145 of 2004 and in the same Notice of Motion No.5270 of 2004 was taken out praying for restraining orders against the defendant.

3. The plaintiffs are the brothers of Andu Sali,

the husband of the defendant Anita and the said Andu Sali died on 26/12/2002. Thus the defendant is the sister-in-law of the plaintiffs. The plaintiffs claim that there was a family settlement arrived at between the plaintiffs and the defendant on 14/3/2004 and it was reduced in writing. A copy of the said purported family settlement came to be annexed to the plaint. By way of the Notice of Motion the plaintiffs sought restraining orders against the defendant so as not to transfer or create any third party interest on any of the property set out in the said family settlement, during the pendency of the suit. The defendant filed her reply/Written Statement and denied any such settlement that had taken place on 14/3/2004 or at any time after her husband's demise. She pleaded that all the properties set out in the so called family settlement were the properties which were self acquired by her late husband and they were not part of the joint family properties or ancestral properties. She also pointed out that the plaintiffs' individually held some immoveable properties which were not shown to be part of the family settlement. In addition, other family members like mother-in-law also held

properties in their respective names and they were not shown to be part of the family settlement dated 14/3/2004. It was under these circumstances, the trial court recorded a finding that prima facie there was no material to show that the properties set out in the family settlement dated 14/3/2004 was a joint family property or an ancestral properties. On the contrary, the voluminous record submitted by the defendant was considered by the trial court to record a finding that prima facie there was no case to pass such restraining orders. Having regards to the averments made in the plaint and the Written Statement filed by the defendant, the reasoning given by the trial court cannot be faulted with and, therefore, there is no case made out to entertain this appeal against an interlocutory order.

4. The appeal, therefore, fails and the same is hereby dismissed in limine. The suit has yet to be registered, but it would be appropriate that the trial of the suit is expedited and it is ordered accordingly.

(B.H. Marlapalle,J.)